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PROJECT NO. 51840

**RULEMAKING TO ESTABLISH
ELECTRIC WEATHERIZATION
STANDARDS**

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**BEFORE THE
PUBLIC UTILITY COMMISSION
OF TEXAS**

STAND-ALONE EXECUTIVE SUMMARY OF VISTRA CORP'S COMMENTS

- Vistra Corp. (Vistra) supports the Commission's decision to focus the proposed rule on winter weather emergency preparedness for generators and transmission service providers as identified in the Quanta and Federal Energy Regulatory Commission (FERC)/North American Electric Reliability Corporation (NERC) reports.
- Vistra supports the comments and recommended rule language revisions proposed by Texas Competitive Power Advocates (TCPA).
- Since Texas generators are regulated by the Public Utility Commission of Texas (Commission) and FERC/NERC, harmonization of requirements, where possible, will increase reliability, decrease costs, and avoid duplicative but not identical requirements.
- If future amendments to the rule address other types of weather emergencies, the Commission should take into account any applicable NERC standards for Generator Owners and Operators.
- Vistra proposes some language changes to ensure that the objective of the proposed rule is to implement feasible winter emergency *preparedness*, as provided in new Section 35.0021(b) of the Public Utility Regulatory Act (PURA), not unrealistic operational *performance* guarantees.
- The definition of "Cold weather critical component" in subsection (b)(1) should be more specific in referring to components whose failure could result in significant and total loss of a generation unit, not a unit trip or derate.
- Subsection (c)(1)(C) of the proposed rule should be modified to clarify that generators will not be required to meet an unachievable standard of preventing the reoccurrence of any cold weather critical component failure that occurred last winter.
- Stakeholder input on the forms and filings contemplated by subsections (c)(2) and (3) of the proposed rule is necessary because of the highly technical nature of the information that will be compiled and reported.
- In addition to violation appeals recommended by TCPA, subsection (c)(4) of the proposed rule should be modified to provide due process for generation entities with an opportunity to appeal an Electric Reliability Council of Texas, Inc. (ERCOT) finding that a generator's winter readiness report is not compliant.

COMMENTS OF VISTRA CORP.

TO THE PUBLIC UTILITY COMMISSION OF TEXAS:

Vistra, on behalf of itself and its subsidiary power generation companies, submits the following comments concerning proposed new 16 Tex. Admin. Code (TAC) § 25.55 relating to weather emergency preparedness, to implement weather emergency preparedness measures for generation entities and transmission service providers in the ERCOT power region, as approved for publication by the Commission at its August 26, 2021 Work Session, and as published in the *Texas Register* on September 10, 2021.

I. Vistra's Comments

A. The Commission has appropriately focused the proposed rule on winter emergency preparation. Preparation for other types of weather emergencies, if necessary, should be addressed in future rulemaking proceedings.

As indicated in its comments filed on June 23, 2021 in this project,¹ Vistra supports the establishment of meaningful weatherization and weather emergency preparedness requirements for generators, as directed by the Legislature in Senate Bill 3. The Commission has taken a sound approach in the proposed rule, by addressing the targeted issue of winter weather preparedness, leaving the evaluation of standards of preparedness for other types of weather emergencies until later.

If the adoption of other weatherization standards becomes a matter for future rulemaking projects, the Commission should coordinate any such requirements with any applicable NERC reliability standards. By coordinating reliability standards at the state and federal level, the Commission will be able to take advantage of the significant analysis and review that NERC and affected stakeholders likely have already undertaken. Compliance will be promoted by allowing

¹ Project No. 51840, Comments of Vistra Corp. in Response to Staff's June 9, 2021 Request (June 23, 2021).

Texas generators to learn from generator best practices in regions with similar or more extreme weather patterns, and by allowing engineers and contractors to apply technical and construction methods that have been or will become standardized across the country. Thus, the target will be well-defined and more efficient than if Texas were to develop a standard materially different from the NERC standard. Furthermore, Texas generators will already be required to comply with NERC standards so an effort should be made to avoid unnecessary and duplicative regulations.

B. The definition of “Cold weather critical component” in subsection (b)(1) should be modified to delete references to short-lived, temporary, or impermanent generation unit issues and to focus, instead, on components that could lead to significant unit failures.

Subsection (b)(1) in the proposed rule defines “Cold weather critical component” in an appropriate attempt to focus preparedness activities on the specific mechanical or electronic aspects of a generating unit that, if not weatherized or otherwise prepared for low temperatures, might prevent the unit from operating. However, the definition goes beyond focusing on a unit failure that would affect ERCOT system reliability, which was the goal of Senate Bill 3. Instead, (b)(1) identifies a critical component as one which, if it freezes, “is likely to lead to unit trip, derate, or failure to start.” While all of these are important operational events, expanding the focus of this rule to those components could result in an unworkable standard, since hundreds of thousands of components contribute in some way to a generator’s ability to maximize output. Indeed, derates are common and largely unavoidable in any system condition but particularly in extreme conditions. For example, ice accumulation on an air intake may require using a less efficient bypass route to maintain output while crews work to clear the accumulation. Another example is environmental monitoring equipment becoming impacted by weather conditions, requiring an environmental derate while the issue is investigated and remediated. In neither case is the unit threatened or under-prepared for extreme weather operations – it is simply required to derate its output temporarily while addressing a non-critical and transitory issue.

Further, as written, a generator could be deemed to be out of compliance with the rule if an ERCOT inspector were to conclude that there *might be* the possibility of a unit trip or derate, even if no such trip or derate were to occur. The better standard is whether a non-weatherized component's failure, due to freezing, *would* lead to a total and immediate loss of unit output during a winter storm event. If such a failure would occur, a component clearly would qualify as "critical" and preparing it to avoid freezing would be a reasonable requirement. On the other hand, if companies are forced to prepare units for any conceptual derate, the cost of winterization will be exorbitant. This will put more pressure on marginal units to retire instead of weatherizing.

There is no doubt that this rule, in any form, will add material costs to an already highly competitive generation sector. For this reason, the Commission must continue to focus on implementing changes to the ERCOT market design that will provide adequate revenues to maintain sufficient generation to manage peak demand, especially during extreme weather events. However, it is also important that weatherization standards are practical and realistic so that the costs of compliance are manageable and the market continues to be efficient and affordable. The generation sector did not perform up to expectations during Winter Storm Uri and the bar must be raised. However, establishing standards to prevent any possible negative outcome is impractical and unrealistic. In addition, overly prescriptive rules can lead to more maintenance outages to perform non-critical work to mitigate the risk of potential penalties, thus reducing available generation. It is a tough balancing act, but the Commission can improve performance at a reasonable cost by focusing the rule on components that would lead to critical failures.

In short, Vistra's proposed modified standard (to subsection (b)(1), below) would more cleanly implement the purpose of Senate Bill 3's requirements and establish a better bright line for compliance:

(b)(1) Cold weather critical component – Any component that is susceptible to freezing, the occurrence of which is likely to lead to a unit trip, derate or failure to start would lead to a significant risk of immediate loss of total generation unit output.

C. The language in proposed subsection (c)(1)(C) of the rule should be narrowed to clarify compliance requirements for generation entities and ensure that the Commission establishes reasonable expectations for emergency weather preparation.

Subsection (c)(1)(C) addresses one of an itemized list of actions a generation entity is required to complete by December 1, 2021: “All actions necessary to prevent a reoccurrence of any cold weather critical component failure that occurred in the period between November 30, 2020, and March 1, 2021.” Understandably, the Legislature and the Commission want to ensure that generators carefully assess all unit failures that occurred during the last winter season and take necessary actions to mitigate underlying problems/issues that caused the failures. Vistra has demonstrated support for this goal by investing in new equipment and processes to mitigate risks and improve reliability.

The complexity of the mechanical and electronic components of individual generation units and the multiple reasons that such components might fail during extreme weather make it impossible for a generation entity to be able to certify, despite extraordinary engineering efforts and substantial capital investment, that all necessary actions are identified and taken to ensure that **all** “reoccurrences” will be prevented. Moreover, certifying the prevention of reoccurrences shifts the weight of this rule provision away from a preparation standard and toward a performance one, which falls outside the scope of Senate Bill 3.

Following Winter Storm Uri, Vistra undertook an exercise to assess and improve its ERCOT fleet (17 generation units with multiple fuel and unit design characteristics). This includes efforts to address potential weather-related issues. Many of the identified possible enhancements require significant capital expense. Notably, this assessment was made before taking into account

the winterization requirements of Senate Bill 3 and the Commission's proposed rules implementing it and other legislative mandates resulting from Winter Storm Uri. While significant investments of time and money demonstrate Vistra's commitment to the goals the Legislature established in Senate Bill 3 to address problems experienced during Winter Storm Uri, the reality is that no reasonable set of improvements can prevent all future critical component failures, for similar or different reasons, because of the simple fact that human-built equipment will inevitably fail in some respect. Moreover, critical component failures may not be caused by one issue; interactions of mechanical and electronic parts cannot always be isolated so that cause of failure can be clearly identified.

As the proposed rule currently reads, Vistra would be required to submit an attestation that it has taken all actions necessary to prevent a reoccurrence of any critical component failure that occurred this past winter. Such an attestation would be impossible. Generators can be expected to investigate and address known and correctible deficiencies, but they cannot be expected to attest that "all actions necessary to prevent a reoccurrence" of a failure have been taken. This provision of the proposed rule should be modified to establish a reasonable compliance goal that requires action by generators but gives the Commission and the public a realistic expectation about how much protection from future weather issues can reasonably and realistically be achieved – particularly in such a short time period (effectively, only a single outage season).

Vistra recommends that the Commission modify the language in this subsection of the proposed rule to require generation entities to do the following:

(c)(1)(C) ~~All actions necessary to prevent a reoccurrence of~~ Assessment of possible causes for any cold weather critical component failure that occurred in the period between November 30, 2020, and March 1, 2021 and a description of actions taken or underway to address a reoccurrence, where feasible.

D. Stakeholder input should be incorporated into the process for developing the forms and reports contemplated in subsections (c)(2) and (c)(3) of the proposed rule.

The TCPA filing provides suggestions for obtaining stakeholder input that Vistra supports related to these two provisions in the proposed rules. Vistra recommends that the TCPA rule language edits on this topic be adopted and reiterates that point here for emphasis.

Subsection (c)(2) of the proposed rule requires generators to submit an annual winter readiness report to the Commission and ERCOT using a form “prescribed by ERCOT and developed in consultation with commission staff.” Subsection (c)(3) requires ERCOT to develop a checklist form for the inspections it will conduct of cold weather critical components. The Commission should incorporate an opportunity for stakeholder input into the creation of both these forms to ensure that the technical and operational details so important to assessing weather preparation and compliance are accurately described. Generators and other stakeholder experts can provide valuable technical language and explanations that will help ensure the forms are understandable, elicit consistent information, and capture the Commission’s concerns and objectives in collecting this information.

E. Generators should have an opportunity to appeal an ERCOT determination under subsection (c)(4) that a winter readiness report is non-compliant.

As a matter of fairness and due process, Vistra believes that generators should have an avenue to appeal a determination by ERCOT that a violation has occurred and supports the TCPA comments and rule language edits to that effect.

Additionally, proposed subsection (c)(4) provides that ERCOT must review winter readiness forms submitted by generation entities by the December 1, 2021 deadline before filing (by December 10, 2021) a summary report of all the reports that “delineates compliance.” In this initial filing, since the objective is to maximize winter preparedness and there may be uncertainties

about reporting details, there should be some leeway other than the Good Cause Exception² path, for a generation entity to respond if ERCOT decides that a generator's report does not satisfy the requirements of the rule. A reasonable process would allow the generation entity to appeal an ERCOT determination of non-compliance so that the issue can be discussed and resolved as quickly as possible.

Vistra recommends the following modification to the rule to address this issue:

(c)(4) No later than December 10, 2021, ERCOT must file with the commission a summary report of the winter weather readiness reports filed under paragraph (2) of this subsection, including a summary of compliance with the requirements of paragraph (1) and (2) of this subsection and a spreadsheet that delineates compliance with the requirements of paragraph (1) of this subsection for all resources subject to those requirements. A generation entity will have a reasonable period to appeal any determination of non-compliance and to cure any identified deficiencies.

F. Except where inconsistent with the recommendations in these comments, Vistra supports adoption of the changes to the rule advocated by TCPA in its filing made contemporaneously in this Project.

The TCPA members have provided thoughtful and comprehensive comments about aspects of the proposed rule language that deserve further review and require clarification. A redline version of the rule identifying all the recommended changes is included in the TCPA filing. To avoid duplication and for ease of review, Vistra has not repeated those issues here. With the exception of the few instances where Vistra recommends slightly different language, Vistra agrees with and supports the changes proposed by TCPA and urges their adoption by the Commission.


² The good cause exception in subsection (c)(6) appears to provide a way for a generator that knows, before submitting a winter readiness report, that it may be unable to comply with a specific requirement of the rule. The exception mechanism does not help a generator if ERCOT deems its filed report or winter readiness actions to be non-compliant.

Conclusion

Vistra appreciates the Commission's effort in developing the rule language necessary to implement provisions of Senate Bill 3 and the opportunity to submit these comments. As the Commission moves towards finalizing the rule, it is critically important that it maintain focus on the rule's purpose: ensuring reasonable *preparation*, not unrealistically mandating perfect *performance*. We look forward to working with Commission Staff and all other stakeholders to finalize a version of the rule that will achieve the goals established by the Legislature.

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Respectfully submitted,



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